



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG-2023-0158]

RIN 1625-AA08

### Special Local Regulation; Lower East River & New York Harbor 4th of July Fireworks, Manhattan, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposes establishing a special local regulation on the navigable waters of the lower East River and New York Harbor, NY, for vessel management for the annual 4th of July fireworks display. This special local regulation allows the Coast Guard to control vessel movement and prohibit all vessel traffic from entering the fireworks barge buffer zone, and establish four separate viewing areas. This rule is necessary to provide for the safety of life on the navigable waters immediately before, during, and after a fireworks display that involves multiple barge launch sites on a highly congested waterway. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2023-0158 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Marine Science Technician First Class Ian Rose, Waterways

Management Division, U.S. Coast Guard; telephone 718-354-2250, email D01-SMB-SecNY-Waterways@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port New York
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
LLNR	Light List Number
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
§	Section
SLR	Special Local Regulation
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

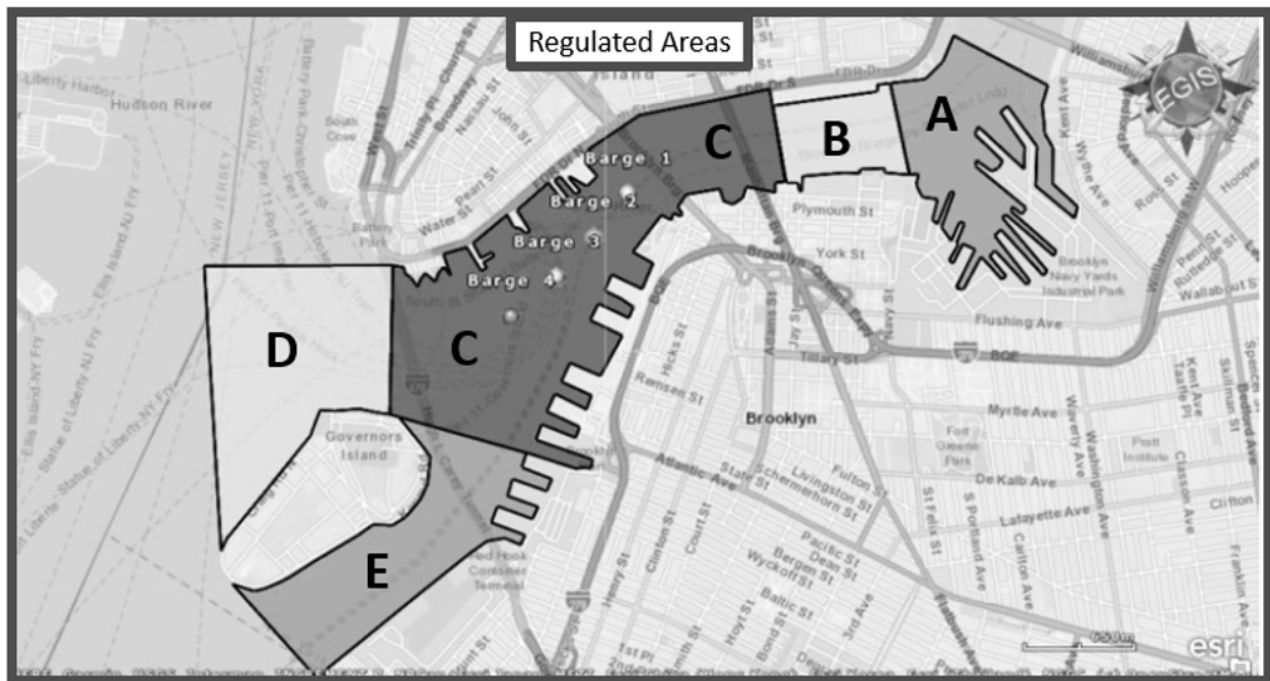
On February 9, 2023, the Coast Guard received a request for the annual 4<sup>th</sup> of July fireworks display to be held on the Lower East River and in the New York Harbor. The Captain of the Port New York (COTP) has determined that this event in close proximity to marine traffic poses a significant risk to public safety and property. The proposed special local regulation mimics those limited access areas established for 4<sup>th</sup> of July in previous years. As in years prior, a buffer zone will be set around the barges and four viewing areas that will separate vessels based on length. Multiple firework displays will commence simultaneously, producing a relatively large fallout zone over the East River when the East River and New York Harbor experiences heavy vessel congestion necessitating the need to control of vessel movement immediately before, during, and after this display.

The combination of multiple simultaneous fireworks displays on the East River, where a significant increase of recreational vessel traffic is anticipated, has the potential to result in serious injuries or fatalities. This proposed rule would establish a buffer zone around the barges in show position and four separate viewing areas separating vessels by size to protect the safety of all waterway users, including event participants and spectators. The proposed rulemaking aims to ensure the safety of participants, non-participants, and transiting vessels on the navigable waters

near the fireworks display and the spectator zone before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under the authority of 46 U.S.C. 70041.

### III. Discussion of Proposed Rule

The Coast Guard proposes establishing a special local regulation subject to enforcement annually from 5:30 through 11:30 p.m. on July 4 or July 5. This special local regulation creates five regulated areas: a buffer zone around each firework display barge and four viewing areas. As shown in the illustration below, the buffer zone, area “C”, will exclude all nonparticipating vessels from the area surrounding the barges immediately before, during, and after the display. The four separate viewing areas, areas “A”, “B”, “D”, and “E”, will separate vessels based on the vessel’s length.



(Illustration showing locations of regulated areas)

The duration of the enforcement times is intended to ensure the safety of vessels, participants, spectators, and those transiting the area during the fireworks display. Navigation rules, 33 CFR part 83, will apply at all times within the areas. The Coast Guard will provide notice of the special local regulation by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

### IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analysis based on these statutes and Executive Orders follows.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the special local regulation’s size, location, and duration. In addition, although this rule restricts access to the waters encompassed by the special local regulation, the effect of this rule will not be significant because the local waterway users will be notified in advance via a public Broadcast Notice to Mariners and Local Notice to Mariners. The entities most likely affected are commercial vessels and pleasure crafts engaged in recreational activities.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator. The maritime public will be advised

in advance of this special local regulation via Broadcast Notice to Mariners and Local Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area lasting six hours or less that would limit persons or vessels from transiting a portion of the lower East River and New York Harbor during the scheduled event. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

## **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2023-0158. in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

## List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.111 to read as follows:

#### **§ 100.111 Lower East River and New York Harbor 4th of July Fireworks, Manhattan, NY.**

- (a) *Regulated areas.* The regulations in this section apply to the following areas:

- (1) *Area ALPHA:* All navigable waters of the East River bound by a line connecting the following coordinates: from 40°42'46"N 73°58'34"W (near Grand St. Manhattan), to 40°42'38"N 73°58'12"W, along the shore to 40°42'22"N, 073° 58'45"W (near Little Street, Brooklyn, NY), to 40°42'37"N, 073° 58'50"W (the corner of Pier 42, Manhattan, NY), then along the shoreline back to the point of origin.

- (2) *Area BRAVO:* All navigable waters of the East River bound by a line connecting the following points: from 40°42'37"N, 073° 58'50"W (near Pier 42, Manhattan, NY), to 40°42'22"N, 073° 58'45"W (near Little Street, Brooklyn, NY), along the shore to 40°42'19"N 73°59'15"W (near Pearl Street, Brooklyn, NY), to 40°42'33"N 73°59'18"W (near Jefferson Street, Manhattan, NY) then along the shoreline to the point of origin.

- (3) *Area CHARLIE:* All navigable waters of the East River bound by a line connecting the following points: beginning at 40°42'33"N 73°59'18"W (near Jefferson Street, Manhattan, NY), to 40°42'19"N 73°59'15"W (near Pearl Street, Brooklyn, NY), along the shore to 40°41'28"N 74°00'19"W (Pier 8, Brooklyn, NY), to 40°41'34.728"N 74°00'54"W (near Governors Island Ferry Slip), to 40°42'03"N 74°00'55"W (near Battery Park, Manhattan, NY), then along the shoreline back to the point of origin.



(4) *Area DELTA*: All navigable waters of the East River bound by a line connecting the following points from 40°42'03"N 74°00'55"W (near Battery Park, Manhattan, NY), to 40°41'35"N 74°00'54"W (near the Governors Island Ferry Slip), along the shoreline of Governors Island to 40°41'09"N 74°01'36"W, then north to 40°42'03"N, 074°01'40"W, then back to the point of origin.

(5) *Area ECHO*: All navigable waters of the East River bound by a line connecting the following points beginning at 40°41'34"N, 74°0'51"W (near Governors Island) to 40°41'28"N 74°00'19"W (Pier 8, Brooklyn, NY), to 40°40'44"N 74°01'10"W (Red Hook) , to 40°41'03"N 74°01'32"W, then along the shore back to the point of origin.

(b) *Definitions*. As used in this section:

*Designated Representative* is any Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer or other officer operating a Coast Guard vessel and a Federal, State and local officer designated by or assisting the Captain of the Port (COTP) New York in the enforcement of this section.

*Official Patrol Vessel* means any Coast Guard, Coast Guard Auxiliary, Federal, State or local law enforcement vessel assigned or approved by the COTP New York to assist in the enforcement of this section.

*Spectator* means a person or vessel not registered with the event sponsor as participants or official patrol vessels.

(c) *Regulations*. (1) In accordance with the special local regulations in §100.35, entry into, transiting, or anchoring within the regulated areas described in paragraph (a) of this section is prohibited, unless authorized by the COTP or a designated representative.

(2) All vessels that are authorized by the COTP or a designated representative to enter the regulated areas established by this section must adhere to the following restrictions:

(i) Area ALPHA access is limited to vessels less-than or equal to 20 meters (65.6ft) in length.

- (ii) Area BRAVO access is limited to vessels over 20 meters (65.6ft) in length.
  - (iii) All vessels are prohibited from entering area CHARLIE without permission from the COTP or a designated representative after 6 p.m. Commercial passenger vessels that need to transit through the Charlie Section enroute to their designated viewing areas must receive authorization from the Coast Guard Patrol Commander. Commercial passenger vessels must pass as close to the pierhead as possible and must transit through the zone no later than 7:30 p.m. Vessels must operate at the minimum speed necessary to maintain safe course while crossing through the Charlie Section and take all direction that may be provided by the Coast Guard.
  - (iv) Area DELTA access is limited to vessels over 20 meters (65.6ft) in length.
  - (v) Area ECHO access is limited to vessels less-than or equal to 20 meters (65.6ft) in length.
  - (vi) Vessels desiring to utilize any of these limited access areas must enter the area by 7:30 p.m.
- (3) During periods of enforcement all persons and vessels in the limited access areas must comply with all lawful orders and directions from the COTP New York or the COTP New York's designated representative.
- (4) Vessel operators desiring to enter or operate within a limited access area should contact the COTP New York at 718-354-4088 or on VHF 16 to obtain permission.
- (5) Spectators or other vessels must not anchor, block, loiter or impede the transit of event participants or official patrol vessels in the limited access area during the effective dates and times unless authorized by COTP New York or designated representative.
- (6) The COTP or a representative will inform the public through local notice to mariners. Broadcast Notices to Mariners, or both, of the enforcement period for the

regulated area as well as any changes of the enforcement times.

(d) *Enforcement periods.* This section will be subject to enforcement annually from 5:30 through 11:30 p.m. on July 4. In the event the fireworks display is postponed due to inclement weather or other causes, this section will be enforced annually from 5:30 to 11:30 p.m. on July 5.

Dated: May 4, 2023.

Z. Merchant,  
Captain, U.S. Coast Guard,  
Captain of the Port New York.

[FR Doc. 2023-10070 Filed: 5/10/2023 8:45 am; Publication Date: 5/11/2023]